

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **11-4162**

THE HONORABLE LEON A. KENDALL, Petitioner

VS.

THE DAILY NEWS PUBLISHING CO., ET AL.

(V.I. S. Ct. Civ. No. 2010-00046)

Present: RENDELL, HARDIMAN and VAN ANTWERPEN, Circuit Judges

Submitted are:

- (1) Petitioner's petition for a writ of certiorari and appendix;
- (2) Respondents' brief in opposition thereto;
- (3) Respondents' supplemental appendix;
- (4) Petitioner's reply brief;
- (5) Petitioner's motion for leave to file a supplemental appendix; and
- (6) Petitioner's supplemental appendix in the above-captioned case.

Respectfully,

Clerk

MMW/EGL/nmr

THE HONORABLE LEON A. KENDALL  
V.  
THE DAILY NEWS PUBLISHING CO., ET AL.  
C.A. No. **11-4162**  
Page 2

---

O R D E R

Petitioner's motion for leave to file a supplemental appendix is granted. Petitioner's petition for a writ of certiorari is granted as well. See 3d Cir. LAR 112.1 (2010). The writ is granted with respect to the three issues that petitioner raises in his petition, namely: (1) whether the "actual malice" standard articulated in New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964), can be satisfied by a defendant's mere awareness of a defamatory implication (as opposed to an actual intent to convey that implication) and, if so, whether the standard was satisfied in this case; (2) whether the Virgin Islands Supreme Court's review exceeded the scope of the "independent examination" required by Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 499 (1984); and (3) whether the Virgin Islands Supreme Court Justices erred in not recusing themselves from this matter. This appeal is consolidated with In re Kendall, C.A. No. 11-4471, for disposition only.

By the Court,

/s/ Thomas M. Hardiman  
Circuit Judge

Dated: April 6, 2012

NMR/cc: Howard M. Cooper, Esq.  
Julie E. Green, Esq.  
Michael L. Berry, Esq.  
Kevin A. Rames, Esq.  
Michael D. Sullivan, Esq.